

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2004

Honorable Carmen Hooker Odom
Secretary
North Carolina Department of Health and Human Services
2001 Mail Service Center
Raleigh, NC 27699-2001

Dear Secretary Odom:

We have determined that your State's application for Federal Fiscal Year (FFY) 2004 funds, under Part C of the Individuals with Disabilities Education Act (Part C), can be approved. Therefore, I am enclosing your State's Part C grant award.

The approval is based upon our receipt of required assurances for FFY 2004. This includes the assurance from the North Carolina Department of Health and Human Services (NCDHHS) that the State-wide system of early intervention services required by Part C and its implementing regulations is in effect. In addition, our approval is based upon the assurances provided by NCDHHS in the April 23, 2004 and May 25, 2004 memoranda from Duncan Munn to John Edwards.

This year, a number of States have either established systems of payments or are considering establishing or revising their systems of payments. Under 34 CFR §303.173(a), each State's Part C application must include the State's policies and procedures that identify: (1) how it will pay for early intervention services (under 34 CFR §303.520(a)); (2) any system of payments that the State chooses to establish (under 34 CFR §303.521(a)); and (3) all funding sources (under 34 CFR §303.522). Although a State is not required under Part C to access public and private insurance available to a family, if a State requires parents under Part C to access their public and/or private insurance, the State must include this information in its Part C application as well as an assurance, under 34 CFR §303.520(b)(3)(ii), that the inability of a parent to pay will not result in the denial of any service under Part C.

States must ensure that all of the functions and early intervention services under 34 CFR §303.521(b) are carried out at public expense (i.e., no cost to the family). Additionally, under 34 CFR §303.521(c), States that provide children with disabilities under age 3 with a free appropriate public education (FAPE) under State law (i.e., birth-mandate States) must ensure that no fees are charged for the FAPE services provided to these children and their families. If a State has a system of payments under 34 CFR §303.521(a), any parent fees collected (for co-payments or other fees for services charged and received by the State's Part C program) are "program income" under 34 CFR §80.25. Program income is not included as part of total "State and local expenditures" for purposes of a State's meeting the non-supplanting requirements under Part C at 20 U.S.C. §1437(b)(5)(B) and 34 CFR §303.124.

Your State has on file with the Secretary a system of payments under 34 CFR §303.521(a). As noted above, fees for services charged and received by your State's Part C program are "program income" under 34 CFR §80.25. This letter authorizes your State to add "program income" to its Part C FFY 2004 grant such that the amount of program income received by your State does not need to be deducted from the net allowable costs that can be charged to the Part C grant (as would ordinarily be required under 34 CFR §80.25(g)(1)). When the State adds program income to the net allowable costs charged to the Federal Part C grant, under 34 CFR §80.25(g), all program income funds must be spent on FFY 2004 Part C grant application purposes.

Section I.C. of the FFY 2004 application for Part C funds requested updated information about each State's restricted indirect cost rate. Our records indicate that you do not currently have an approved restricted indirect cost rate under 34 CFR §§76.563-76.569. By accepting Part C grant funds, your agency (as the Lead Agency designated under Part C) is agreeing either to use a restricted indirect cost rate or cost allocation plan as required under the Education Department General Administrative Regulations (EDGAR) and OMB Circular A-87 or to not charge indirect cost rates to the Part C program. Since you do not have an approved rate, the Department has determined that it is necessary to continue to impose a restricted indirect cost rate of 4.55% that the Department imposed in the FFY 2003 Part C grant award letter. This restricted indirect cost rate is a 50% reduction from your unrestricted rate of 9.1% submitted in FFY 2003. The Department calculated this percentage reduction as the average reduction for Part C Lead Agencies that have gone from an unrestricted rate to a restricted rate. This rate will remain in effect until we receive evidence of an approved restricted rate.

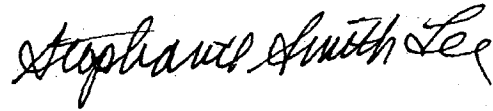
The enclosed grant award for FFY 2004 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application and appendices, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

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We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,

A handwritten signature in black ink, reading "Stephanie Smith Lee". The signature is written in a cursive style with a large, stylized "S" and "L".

Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosure

cc: Duncan Munn, Part C Coordinator